

AMENDED IN SENATE JUNE 16, 2010
AMENDED IN SENATE SEPTEMBER 4, 2009
AMENDED IN SENATE AUGUST 26, 2009
AMENDED IN SENATE JUNE 30, 2009
AMENDED IN SENATE JUNE 11, 2009
AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 471

**Introduced by Assembly Members Arambula and Member Nava
(Coauthors: Assembly Members Caballero, Coto, and Solorio)**

February 24, 2009

~~An act to amend Section 79190 of the Water Code, relating to water management. An act to amend Sections 11040 and 11042 of, and to add Sections 11042.1, 11042.2, 11042.3, and 11046 to, the Government Code, and to amend Section 1341.6 of the Health and Safety Code, relating to legal services.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 471, as amended, ~~Arambula Nava. Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act: eligible project.~~ *Legal Services.*

Existing law requires certain state entities to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding. Existing law exempts from those requirements certain state entities.

This bill would recast these provisions, define terms for their purposes, and state several factors the Attorney General may consider when considering consenting to a state agency, commissioner, or officer employing in-house counsel or outside counsel, as defined. The bill would make other conforming changes.

~~The Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act (bond act), approved by the voters as Proposition 13 at the March 7, 2000, statewide primary election, authorizes the issuance and sale of a total of \$1,970,000,000 in general obligation bonds. The bond act requires that \$630,000,000 of the proceeds from the sale of those bonds be allocated for purposes of water supply reliability projects, including \$250,000,000 for eligible projects that carry out the CALFED Bay-Delta plan. For these purposes, the bond act defines “eligible project” as a project that (1) is identified in a specified CALFED environmental impact statement/environmental impact report (CALFED EIS/EIR), and (2) is within at least one of 6 prescribed categories of projects. Among these categories is a project that constructs a permanent barrier at the head of Old River to improve fish migration and other permanent barriers in the south Sacramento-San Joaquin Delta channels to improve water quality and water level for local diversions. The bond act allocates \$40,000,000 for the purposes of that project.~~

~~This bill would expand the definition of “eligible project” for purposes of these provisions of the bond act to mean a project that is either (1) identified in the CALFED EIS/EIR, or (2) within at least one of the 6 prescribed categories of projects. The bill also would change the barrier improvement project category to, instead, include a project that constructs a barrier to protect fish and other barriers in Sacramento-San Joaquin Delta channels to improve water quality and water level for local diversions.~~

~~The bill would provide for the submission of its provisions as a proposed amendment of a general obligation bond act to the voters at the next statewide election in accordance with specified law.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11040 of the Government Code is
2 amended to read:

11040. (a) This article does not affect the right of any state agency or employee to employ counsel in any matter of the state, after first having obtained the written consent of the Attorney General.

(b) It is the intent of the Legislature that overall efficiency and economy in state government be enhanced by employment of the Attorney General as counsel for the representation of state agencies and employees in judicial ~~and~~ or other proceedings.

The Legislature finds that it is in the best interests of the people of the State of California that the Attorney General be provided with the resources needed to develop and maintain the Attorney General's capability to provide competent legal representation of state agencies and employees in any judicial *or other* proceeding.

(c) Except with respect to employment by the state officers and agencies specified by title or name in Section 11041 or when specifically waived, *exempted, or excepted* by statute other than Section 11041, the *express* written consent of the Attorney General is required prior to employment of *outside* counsel for representation of any state agency or employee ~~in any judicial proceeding~~.

SEC. 2. Section 11042 of the Government Code is amended to read:

11042. ~~No~~ A state agency, commissioner, or officer ~~shall employ any legal counsel other than~~ may employ in-house counsel to provide legal services. However, except as otherwise specifically provided in this article or another statute, only the Attorney General, or one of his or her assistants or deputies, ~~in any matter~~ shall represent a state agency, commissioner, or officer in relation to a judicial or other proceeding in which the agency, commissioner, or officer is interested, or is a party as a result of office or official duties, unless express written consent is given by the Attorney General to employ in-house counsel.

SEC. 3. Section 11042.1 is added to the Government Code, to read:

11042.1. Nothing in this article prohibits a state agency, commissioner, or officer from obtaining legal services from the Attorney General that are unrelated to a judicial or other proceeding.

SEC. 4. Section 11042.2 is added to the Government Code, to read:

1 11042.2. When a state agency, commissioner, or officer
2 employs in-house or outside counsel in a judicial or other
3 proceeding, the Attorney General may intervene or appear as
4 amicus curiae to the extent permitted by the court or agency.

5 SEC. 5. Section 11042.3 is added to the Government Code, to
6 read:

7 11042.3. In determining whether to give consent to a state
8 agency, commissioner, or officer to employ in-house counsel or
9 outside counsel in a judicial or other proceeding, and the extent
10 of this consent, the Attorney General may consider public policy,
11 potential conflicts of interest, the availability of subject matter
12 expertise and staffing within the Office of the Attorney General,
13 the availability of subject matter expertise and staffing among
14 in-house counsel, and other relevant factors.

15 SEC. 6. Section 11046 is added to the Government Code, to
16 read:

17 11046. For purposes of this article and unless otherwise
18 specifically stated, the following definitions shall apply:

19 (a) “In-house counsel” means a licensed attorney employed in
20 state service by a state agency, commissioner, or officer, other
21 than a licensed attorney employed in state service in the Office of
22 the Attorney General.

23 (b) “Judicial or other proceeding” means litigation in a civil
24 court, an administrative adjudicatory proceeding in which an
25 agency is represented by an attorney, including any related
26 alternative dispute resolution proceeding. “Judicial or other
27 proceeding” also includes advice or opinions relating to bonds.
28 Administrative adjudicatory proceedings before the State Personnel
29 Board, the Department of Personnel Administration, or the
30 Unemployment Insurance Appeals Board are exempt from this
31 definition.

32 (c) “Outside counsel” means a licensed attorney engaged in
33 the private practice of law.

34 SEC. 7. Section 1341.6 of the Health and Safety Code is
35 amended to read:

36 1341.6. (a) The Attorney General shall render to the director
37 opinions upon all questions of law, relating to the construction or
38 interpretation of any law under the director’s jurisdiction or arising
39 in the administration thereof, that may be submitted to the Attorney
40 General by the director and upon the director’s request shall act

1 as the attorney for the director in actions and proceedings brought
2 by or against the director under or pursuant to any provision of
3 any law under the director's jurisdiction.

4 (b) Sections ~~11041~~, 11042, 11042.1, 11042.2, 11042.3, and
5 11043 of the Government Code do not apply to the Director of the
6 Department of Managed Health Care *or to the Department of*
7 *Managed Health Care*.

8 ~~SECTION 1. Section 79190 of the Water Code is amended to~~
9 ~~read:~~

10 ~~79190. Unless the context otherwise requires, the following~~
11 ~~definitions govern the construction of this article:~~

12 (a) ~~"CALFED Bay-Delta Program" or "program" means the~~
13 ~~undertaking by CALFED pursuant to the Framework Agreement~~
14 ~~dated June 20, 1994, to develop a long-term solution to water~~
15 ~~management, environmental, and other problems in the bay-delta~~
16 ~~watershed by means of a programmatic environmental impact~~
17 ~~statement/environmental impact report.~~

18 (b) ~~"CALFED EIS/EIR" means the final programmatic~~
19 ~~environmental impact statement/environmental impact report~~
20 ~~prepared by CALFED.~~

21 (c) ~~"CALFED stage 1 action" means an action identified in the~~
22 ~~preferred alternative of the CALFED EIS/EIR as an action intended~~
23 ~~for implementation during stage 1 of Phase III of the CALFED~~
24 ~~Bay-Delta Program.~~

25 (d) (1) ~~"Eligible project" means a demonstration project, subject~~
26 ~~to the CALFED adaptive management principle that requires an~~
27 ~~assessment of the performance of the demonstration projects in~~
28 ~~order to determine which projects are successful in achieving the~~
29 ~~goals of the program.~~

30 (2) ~~"Eligible project" means a project that meets either of the~~
31 ~~following requirements:~~

32 (A) ~~The project is identified in the CALFED EIS/EIR as a~~
33 ~~CALFED stage 1 action.~~

34 (B) ~~The project does one or more of the following:~~

35 (i) ~~Constructs treatment facilities or relocates discharge facilities~~
36 ~~for agricultural drainage generated within the delta to improve~~
37 ~~water quality in the delta or the quality of water that is transported~~
38 ~~from the delta.~~

1 (ii) ~~Constructs facilities to control waste discharges that~~
2 ~~contribute to low dissolved oxygen and other water quality~~
3 ~~problems in the lower San Joaquin River and the south delta.~~

4 (iii) ~~Constructs fish facilities for the State Water Project or the~~
5 ~~Central Valley Project intakes in the south delta, such as facilities~~
6 ~~for fish screens, fish handling, and fish passage, or modifications~~
7 ~~to intake structures or other facilities, to reduce losses of any life~~
8 ~~stages of fish to water diversions in the San Joaquin River and the~~
9 ~~delta in accordance with paragraph (1) of Section (C) of Chapter~~
10 ~~IV of the board's 1995 water quality control plan.~~

11 (iv) ~~Constructs a barrier to protect fish and other barriers in~~
12 ~~delta channels to improve water quality and water level for local~~
13 ~~diversions.~~

14 (v) ~~Constructs facilities to control drainage from abandoned~~
15 ~~mines that adversely affect water quality in the bay delta.~~

16 (vi) ~~Constructs a permanent barrier at Grantline Canal to~~
17 ~~improve water quality and water levels for local diversion.~~

18 (e) ~~"Subaccount" means the Bay-Delta Multipurpose Water~~
19 ~~Management Subaccount created by Section 79194.~~

20 SEC. 2. ~~Section 1 of this act shall take effect only upon~~
21 ~~approval by the voters of the section as an amendment to the Safe~~
22 ~~Drinking Water, Clean Water, Watershed Protection, and Flood~~
23 ~~Protection Bond Act.~~

24 SEC. 3. ~~Section 1 of this act shall be submitted to the voters~~
25 ~~at the next statewide election in accordance with provisions of the~~
26 ~~Government Code and the Elections Code governing the~~
27 ~~submission of a statewide measure to the voters.~~